STATE TERM CONTRACT

THIS CONTRACT (the "Contract") is between the State of Ohio ("State"), through its Department of Administrative Services, General Services Division, at 4200 Surface Road, Columbus, Ohio, 43228 and Vista Solutions Group ("Contractor"), with offices at 500 W. Whitestone Boulevard, Suite 200, Cedar Park, Texas, 78613.

BACKGROUND

The State recognizes that it is sometimes advantageous to do business with some manufacturers under a State term contract rather than through a competitive bidding or proposal process. In such cases, the State may enter into a contract with the manufacturer provided that the manufacturer offers its products and ancillary services at the same prices that the manufacturer offers those products and services to the US Government under the GSA's Multiple Award Schedule program or SmartBuy program. Or if the manufacturer has no contract under the GSA's Multiple Award Schedule program or SmartBuy program, the State will accept the pricing the manufacturer offers to its distributors. Further, if the manufacturer has no GSA Multiple Award Schedule or SmartBuy contract and no distributors, the State may accept the prices that the manufacturer offers to its most favored customers for each product or service.

The State also recognizes that some manufacturers work primarily through dealers for various reasons, including offering customers better support through dealers that have a local presence in a service area. Because of this, the State may sometimes agree to work directly with a manufacturer's dealers.

However, if the Contractor is not the manufacturer of the products or services under this Contract, the Contractor must submit a letter from the manufacturer that assures the State that the Contractor is an authorized dealer in the manufacturer's products or services. The letter also must assure the State that the Contractor will have sufficient quantities of the offered products for the duration of the Contract to meet the State's needs under the Contract during the initial term and any extensions. Further, the letter must identify each of the manufacturer's product and service that the Contractor will supply under this Contract. The letter also must contain an assurance of the availability through the dealer of repair services and spare parts for products covered by this Contract for five years from the date of purchase. It also must contain an assurance that software maintenance will be available under the terms of this Contract either from the dealer or the manufacturer for six years from the date of acceptance. (This assurance is not necessary for PC and PC-based server software with a perpetual license fee of less than $10,000.00 per copy.) The dealer must submit the letter, signed by an authorized representative of the manufacturer, with the executed copies of this Contract.

This Contract establishes terms and conditions under which State agencies (including any board, instrumentality, commission, or other political body) and Ohio political subdivisions, such as counties, municipalities, and townships, may acquire the Contractor's products or services at the pricing identified below. This Contract, however, only permits such; it is not a requirements contract and does not obligate any State agency or political subdivision to acquire the Contractor's products or services.

TERMS AND CONDITIONS

1 - TERM

1.1 **TERM.** This Contract is effective on the date the State's duly authorized representative executes it, as evidenced by the date appearing with the representative's signature, below. Unless this Contract is terminated or expires without renewal, it will remain in effect until the end of the State's current fiscal biennium, which is June 30, 2011. Termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for before termination or limit the State's rights in such.

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2 - PRICING AND PAYMENT

2.1 **CERTIFICATION OF ACCURACY.** By checking one of the following three items, the Contractor certifies that the Contractor's prices under this Contract are:

The prices at which the Contractor currently offers each product and service to the US Government under the GSA's Multiple Award Schedule program;

X The prices at which the Contractor currently offers each product and service to the US Government under the GSA's SmartBuy program; or

The best prices at which the Contractor has offered each product and service to its most favored customers within one year before the date the Contractor executed this Contract or adds the product or service to this Contract, whichever is later.

If the Contractor is offering prices based on its most favored customer prices, the Contractor represents that it does not have a GSA Multiple Award Schedule or SmartBuy contract.

If the Contractor has submitted a manufacturer's letter to certify that the Contractor is an authorized dealer for the manufacturer, the Contractor represents that the information in the letter is accurate and that a duly authorized representative of the manufacturer signed the letter.

The Contractor further certifies that the above representations will apply and be true with respect to all future pricing information submitted to revise this Contract.

2.2 **PRICE ADJUSTMENTS.** If the Contractor has relied on its GSA Multiple Award Schedule pricing or its GSA SmartBuy pricing, the State will be entitled to any price decreases that the Contractor offers to the GSA for any of its products and services during the term of this Contract. The Contractor must notify the State of any reduction in its GSA Multiple Award Schedule or SmartBuy pricing within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

If the Contractor has relied on its best customer pricing, the State will be entitled to a price decrease any time the Contractor or any of its dealers or distributors under this Contract sells a product or a service to any of its customers for less than the price agreed to between the State and the Contractor under this Contract. Any time the Contractor or any of its dealers or distributors under Section 3.1 of this Contract sells a product or provides a service to any customer for less than it is then available to the State under this Contract, the Contractor must notify the State of that event within 30 days of its occurrence and immediately reduce the price of the affected products or services to the State under this Contract.

The Contractor also must notify the State within 30 days of any general reduction in the price of any product or service covered by this Contract, even if the general reduction does not place the price of the product or service below the price available to the State under this Contract. The purpose of this notice of a general reduction in price is to allow the State to assess the value the State believes it is receiving under this Contract in light of the general reduction. If the State believes it is appropriate, the State may ask to renegotiate the Contract price for the products and services affected by the general reduction in price. If the Contractor and the State cannot agree on a renegotiated price, then on written notice to the Contractor, the State may immediately remove the affected products and services from this Contract.

2.3 **PRICELIST.** The Contractor's pricelist for the products and services that the Contractor may provide to the State under this Contract is attached as Exhibit I. For convenience, those products and services are called "Deliverables" in this Contract. Any custom materials resulting from the Contractor's services also are called "Deliverables" in this Contract. The Contractor may not provide any other Deliverables under this Contract without a prior written amendment to this Contract that both the State

and the Contractor have signed. Furthermore, the Contractor may not charge the State greater prices for these Deliverables than the prices on the Exhibit I. If Exhibit I contains or incorporates by reference any terms or conditions other than a description of the scope of license for software, a description of the Contractor's products and services, and the prices for those products and services, those terms or conditions are excluded from this Contract and are of no effect. Exhibit I is identified as the following pricelist:

Price List_Vista Solution Group_OHSTS_9.2009, September 10, 2009

The Contractor will not sell to the State any notebook computers with less than a 1.60 GHz internal clock speed. Additionally, the Contractor will not sell to the State any PCs or servers using CPUs with less than a 3.0 GHz internal clock speed. Additionally, the Contractor will not sell to the State any term software licenses. And except in the case of operating systems licensed in conjunction with desktop PCs, notebook computers, PDAs, and similar personal computing devices that the OEM does not distribute without an operating system, the Contractor will not sell or license any Microsoft software to the State. If any of the foregoing items are listed in the Contractor's pricelist, they are deleted for purposes of this Contract.

2.4 **Payment Due Date**. Payments will be due on the 30th day after the later of:

(a) The date the State actually receives a proper invoice at the office designated in the applicable purchase order to receive it; or
(b) The date the State accepts the Deliverable.

The date the State issues a warrant (the State's equivalent to a check) in payment of an invoice will be considered the date payment is made. Without diminishing the Contractor's right to timely payment, the payment will be overdue only if it is not received by the 30th day after the payment's due date. If the State has not issued payment by then, interest will begin to accrue under Ohio Revised Code (the "Code") § 126.30.

2.5 **Invoice Requirements.** The Contractor must submit an original invoice with three copies to the office designated in the purchase order as the "bill to" address. To be a proper invoice, the invoice must include the following information:

(a) Name and address of the Contractor as designated in this Contract;
(b) The Contractor's federal tax identification number as designated in this Contract;
(c) The Contractor's invoice remittance address as designated in this Contract;
(d) The purchase order number authorizing the delivery of the Deliverables;
(e) A description of the Deliverables, including, as applicable, the time period, serial number, unit price, quantity, and total price of the Deliverables; and

If an authorized dealer has fulfilled the purchase order, then the dealer's information should be supplied in lieu of the Contractor's information. If an invoice does not meet this section's requirements, or if the Contractor fails to give proper notice of a price increase (see the next section), the State will send the Contractor written notice. The State will send the notice, along with the improper invoice, to the Contractor's address designated for receipt of purchase orders within 15 days. The notice will contain a description of the defect or impropriety and any additional information the Contractor needs to correct the invoice. If such notification has been sent, the payment due date will be 30 days after the State receives a proper invoice and has accepted the Contractor's Deliverable.

2.6 **OHIO PAYMENT CARD.** Participating State agencies issuing orders under this Contract may use the Ohio Payment Card. Such purchases may not exceed $2,500 unless the Office of Budget and Management ("OBM") has authorized the agency to exceed this limit. If OBM increases the dollar limit for payment cards for all State agencies, the State will post notice of that on its Procurement Website. Participating State agencies are required to use the Ohio Payment Card in accordance with OBM's current guidelines for the Ohio Payment Card and the agency's approved plan filed with the OBM. The Contractor may process a payment in the payment card network only upon delivery and acceptance of the applicable Deliverables. For partial deliveries or performance, the Contractor may

process a payment for the amount delivered or completed only and not for the entire amount ordered by the ordering agency. Upon completion of the delivery of remaining Deliverables, the Contractor may process a payment request in the payment card network for the remainder of the order. The Contractor should receive payment through its merchant bank within the time agreed upon between the Contractor and its merchant bank. The Contractor should expect normal processing fees from its merchant bank for payment card transactions, which the Contractor may not pass on to the State.

2.7 **NON-APPROPRIATION OF FUNDS.** The State's funds are contingent on the availability of lawful appropriations by the Ohio General Assembly. If the Ohio General Assembly fails to continue funding for any payments due hereunder, the order or orders under this Contract that are affected by the lack of funding will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments with respect to the affected order or orders.

2.8 **OBM CERTIFICATION.** This Contract is subject to Code § 126.07. Any orders under this Contract are void until the Director of the OBM certifies that there is a balance in the appropriation available to pay for the order.

2.9 **CONTROLLING BOARD AUTHORIZATION.** The State's obligations under this Contract are subject to the Ohio Controlling Board continuing to authorize the State's use of its term contracts program. If the Ohio Controlling Board fails to authorize or withdraws its authorization for this program, this Contract will terminate immediately, and the Contractor may not take any more orders under it.

2.10 **TRAVEL EXPENSES.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with OBM's travel policy in Rule126-1-02 of the Ohio Administrative Code (the "Administrative Code").

2.11 **TAXES.** The State is exempt from all sales, use, excise, and property taxes and will not pay any such taxes. To the extent sales, use, excise, or any similar taxes are imposed on the Contractor in connection with any Deliverable, the Contractor must pay those taxes together with any interest and penalties not successfully disputed with the taxing authority.

2.12 **OFFSET.** The State may set off any amounts the Contractor owes to the State under this or other contracts against any payments due from the State to the Contractor under this or any other contracts with the State.

3 - CONTRACT ADMINISTRATION

3.1 **DEALERS AND DISTRIBUTORS.** The State authorizes the Contractor to name one or more dealers to work with the State on behalf of the Contractor. But if the Contractor decides to use any dealers, the Contractor must submit the name, principal business address, addresses for purchase orders and for payments, telephone number, and its federal tax identification number. The Contractor also must submit a completed W9 form for each dealer it wishes to name under this section. The Contractor's submission must be on its official letterhead, signed by an authorized representative, and addressed to the Deputy State Chief Information Officer, Office of Information Technology.
In doing so, the Contractor warrants that:

(a) The Contractor has provided the dealer with a copy of this Contract, and a duly authorized representative of the dealer has agreed, in writing, to be bound by the terms and conditions in this Contract.
(b) Such agreement specifically provides that it is for the benefit of the State as well as the Contractor.
(c) The Contractor will remain liable under this Contract for the services of any dealer and will remedy any breach of the dealer under this Contract.
(d) Payments under this Contract for the services of any dealer may be made directly to that dealer, and the Contractor will look solely to the dealer for any payments due to the Contractor once the State has paid the dealer.

(e) To the extent that there is any liability to the State arising from doing business with a dealer that has not signed the agreement required under this section with the Contractor, the Contractor will indemnify the State for such liability.

If the Contractor wants to designate a dealer that will not receive payments (a "distributor"), the Contractor may do so by identifying the person or organization as a distributor in the authorizing letter. In such cases, information regarding taxpayer identification and payment addressing may be omitted, as may the distributor's W9 form. All other requirements and obligations for designating a dealer apply to designating a distributor.

The State strongly encourages the participation of small and disadvantaged businesses in its contracting programs and has created a certification program to Encourage Diversity Growth and Equity (EDGE) in State contracting. State agencies are instructed to include in their procurements such participation, including through the use of State Term Schedule contracts that are either held by EDGE businesses or that offer the opportunity to work with EDGE dealers or distributors.

3.2 **AUDITS.** During the term of this Contract and for three years after termination, on reasonable notice and during customary business hours, the State may audit the Contractor's records and other materials that relate to the Deliverables and to the pricing representations that the Contractor has made to acquire this Contract. This audit right also will apply to the State's duly authorized representatives and any organization providing funding for any Deliverable.

Unless it is impracticable to do so, all records related to this Contract must be kept in a single location, either at the Contractor's principle place of business or the facilities where the Contractor substantially performed under this Contract. If this is not practical, the Contractor must assume the cost of collecting, organizing, and relocating the records, along with any technology needed for accessing the records, to its office nearest Columbus, Ohio whenever the State or any entity with audit rights requests access to the records. The Contractor must do so within 15 days of receiving the State's written notice of its intent to audit the Contractor's records and must notify the State as soon as the records are ready for audit.

If any audit reveals any material misrepresentation or overcharge to the State, the State will be entitled to recover its damages, including the cost of the audit.

3.3 **INSURANCE.** The Contractor must provide the following insurance coverage at its own expense throughout the term of this Contract:

a. Workers' compensation insurance, as required by Ohio law, and if some work will be done outside Ohio, the laws of the appropriate states where work will be done. The Contractor also must maintain employer's liability insurance with at least a $1,000,000.00 limit.

b. Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, and property damage. The defense cost must be outside of the policy limits. Such policy must designate the State of Ohio as an additional insured, as its interest may appear. The policy also must be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance must be:

$ 2,000,000 General Aggregate
$ 2,000,000 Products/Completed Operations Aggregate
$ 1,000,000 Per Occurrence Limit
$ 1,000,000 Personal and Advertising Injury Limit
$ 100,000 Fire Legal Liability
$ 10,000 Medical Payments

The policy must be endorsed to provide the State with 30-days prior written notice of cancellation or material change to the policy. And the Contractor's Commercial General Liability must be primary over any other insurance coverage.

a. Commercial Automobile Liability insurance with a combined single limit of $500,000.

b. Professional Liability insurance covering all staff with a minimum limit of $1,000,000 per incident and $3,000,000 aggregate. If the Contractor's policy is written on a "claims made" basis, the Contractor must provide the State with proof of continuous coverage at the time the policy is renewed. If for any reason the policy expires, or coverage is terminated, the Contractor must purchase and maintain "tail" coverage through the applicable statute of limitations.

All certificates must be in a form that is reasonably satisfactory to the State as to the contents of the policies and the quality of the insurance carriers. All carriers must have at least an "A-" rating by A.M. Best.

3.4 **CONTRACT COMPLIANCE.** Any State agency that uses this Contract will be responsible for the administration of this Contract with respect to the orders that it places and may monitor the Contractor's performance and compliance with this Contract. If an agency becomes aware of any noncompliance with the terms of this Contract or the specifications of an order, the agency may document the noncompliance and give the Contractor written notice of the noncompliance for immediate correction. If the Contractor fails to cure the noncompliance, the agency may notify the State through the Department of Administrative Services, Office of State Purchasing, by executing a Complaint to Vendor form to help resolve the issue. Should the State determine that the form identifies an uncured breach of this Contract, the State may terminate this Contract and seek such other remedies as may be available to it.

3.5 **POLITICAL SUBDIVISIONS.** Ohio political subdivisions, such as Ohio cities, counties, and townships ("Political Subdivisions"), may rely on this Contract. Whenever a Political Subdivision relies on this Contract to issue a purchase order, the Political Subdivision will step into the shoes of the State under this Contract for purposes of its order, and, as to the Political Subdivision's order, this Contract will be between the Contractor and the Political Subdivision. The Contractor must look solely to the Political Subdivision for performance, including but not limited to payment, and must hold the State harmless with regard to such orders and the Political Subdivision's performance. But the State will have the right to terminate this Contract and seek such remedies on termination as this Contract provides should the Contractor fail to honor its obligations under an order from a Political Subdivision. Nothing in this Contract requires the Contractor to accept an order from a Political Subdivision, if the Contractor reasonably believes that the Political Subdivision is or will be unable to perform its obligations in relation to that order.

3.6 **RECALLS.** If a Deliverable is recalled, seized, or embargoed, or if the Contractor, a manufacturer, packer, processor, or regulatory body finds that a Deliverable has been misbranded, adulterated, or is unsafe, the Contractor must notify the State, through the Department of Administrative Services, Office of State Purchasing, as well as all agencies that have ordered the Deliverable, within ten business days after the Contractor learns of any of the above events. At the option of the State, the Contractor must either reimburse the State for the purchase price of each affected Deliverable or provide an equal or better replacement for each Deliverable at no additional cost to the State. The Contractor also must remove and replace all affected Deliverables within a reasonable time, as determined by the State. Further, at the option of the State, the Contractor may be required to reimburse the State for storage costs and handling fees, which the State may calculate from the time of delivery of each affected Deliverable to the Deliverable's actual removal. Furthermore, the Contractor must bear all costs associated with the removal and proper disposal of the affected Deliverables. The State will treat any failure to refund the purchase price or provide a suitable replacement within a reasonable time, not to exceed 30 days, as a default.

3.7 **TERMINATION.** The State may terminate this Contract or any order under this Contract if the Contractor defaults in meeting its obligations and fails to timely cure its default. The State also may terminate this Contract or any order under it if a petition in bankruptcy is filed by or against the Contractor and not dismissed within 60 days. And the State may terminate this Contract or any order under it if the Contractor violates any law or regulation while performing under this Contract or if it appears to the State that the Contractor's performance is substantially endangered through no fault of the State. In all of the foregoing cases, the termination will be for cause.

On written notice, the Contractor will have 30 days to cure any breach of its obligations under this Contract, provided the breach is curable. If the Contractor fails to cure the breach within 30 days after written notice or if the breach is not one that is curable, the State will have the right to terminate this Contract, the applicable orders, or both immediately upon written notice to the Contractor. Some provisions of this Contract may provide for a shorter cure period than 30 days or for no cure period at all. Those provisions will prevail over this one. If a particular section does not state what the cure period will be, this provision will govern.

The State also may terminate this Contract in the case of breaches that are cured within 30 days but are persistent. "Persistent" in this context means that the State has notified the Contractor in writing of the Contractor's failure to meet any of its obligations two times. After the second such notice, the State may terminate this Contract without a cure period if the Contractor again fails to meet any obligation. The three defaults do not have to relate to the same obligation or type of failure.

The State also may terminate this Contract or any order under this Contract for its convenience and without cause. And the State may terminate this Contract or any order under it if the Ohio General Assembly fails to appropriate funds for any order under this Contract. Further, if a third party is providing funding for an order, the State also may terminate this Contract or any order under it should that third party fail to release any funds related to this Contract or an order under it.

Any notice of termination will be effective as soon as the Contractor receives it. On receipt of the notice of termination, the Contractor will immediately cease all work on any Deliverables affected by the termination and take all steps necessary to minimize any costs the Contractor will incur related to the affected orders. The Contractor also must immediately prepare a report and deliver it to the State. The report must detail all open orders at the time of termination.

If the State terminates this Contract or any order for cause, it will be entitled to cover for the affected orders by using another vendor or vendors on such commercially reasonable terms and conditions as it and the covering vendors may agree. The Contractor will be liable to the State for all costs related to covering for the affected orders to the extent that such costs exceed the costs that the State would have incurred under this Contract for those orders. The Contractor also will be liable for any other direct damages resulting from its breach of this Contract or other event leading to termination for cause.

If the termination is for the convenience of the State, the Contractor will be entitled to compensation for any Deliverable that the Contractor has delivered before the termination. Such compensation will be the Contractor's exclusive remedy in the case of termination for convenience and will be available to the Contractor only once the Contractor has submitted a proper invoice for such, with the invoice reflecting the amount the State determines that it owes the Contractor.

3.8 **EXCUSABLE DELAY.** Neither party will be liable for any delay in its performance under this Contract that arises from causes beyond its reasonable control and without its negligence or fault. The delayed party must notify the other promptly of any material delay in performance and must specify in writing the proposed revised performance date as soon as practicable after notice of delay. For any such excusable delay, the date of performance or delivery will be extended for a period equal to the time lost by reason of the excusable delay. The delayed party also must describe the cause of the delay and what steps it then is taking or will take to remove the cause. The delayed party may not rely on a claim of excusable delay to avoid liability for a delay if the party has not taken commercially reasonable steps to mitigate or avoid the delay.

3.9 **INDEPENDENT STATUS.** The parties will be acting as independent entities. The partners, employees, officers, directors, and agents of one party may only act in the capacity of representatives of that party and not as employees, officers, directors, or agents of the other party and will not be deemed as such for any purpose. Each party assumes full responsibility for the actions of its partners, employees, officers, directors, and agents while performing under this Contract and will be solely responsible for paying those people. Additionally, each party will be solely responsible for withholding and paying social security and income taxes, making workers' compensation contributions, paying disability benefits, and providing fringe benefits, if any, for its partners, employees, officers, directors, and agents, and neither party may legally bind the other party in any manner.

3.10 **LOCATION OF SERVICES AND DATA.** As part of this Contract, the Contractor must disclose the following:

(a) All locations where any services will be performed;
(b) All locations where any State data applicable to the Contract will be maintained or made available; and
(c) The principal place of business for the Contractor and all its subcontractors.

The Contractor may not change any location where any services are performed to a location outside the country of the original location or change any location where the data is maintained or made available to any other location outside the country of the original location without prior written approval of the State, which the State will not be obligated to provide.

4 - DELIVERY AND ACCEPTANCE

4.1 **ACCEPTANCE.** The acceptance procedure for Deliverables will be an informal review by the agency acquiring the Deliverables to ensure that each Deliverable meets the warranties in this Contract. The State will have up to 30 days after installation to do this. The State will not issue a formal letter of acceptance, and passage of 30 days will imply acceptance, though the State will issue a notice of noncompliance if a Deliverables does not meet the warranties in this Contract.

If the State issues a noncompliance letter, the Contractor will have 30 days to correct the problems listed in the letter. If the Contractor fails to do so, the Contractor will be in default without a cure period. If the State has issued a noncompliance letter, the Deliverable will not be accepted until the State issues a letter of acceptance indicating that each problem noted in the noncompliance letter has been cured. If the problems have been fixed during the 30-day period, the State will issue the acceptance letter within 15 days after all defects have been fixed.

4.2 **TITLE.** Title to any Deliverable will pass to the State only on acceptance of the Deliverable, and all risk of loss will remain with the Contractor until title to the Deliverable passes to the State.

4.3 **DELIVERIES.** The Contractor must make all deliveries F.O.B. destination.

5 - INTELLECTUAL PROPERTY

5.1 **COMMERCIAL MATERIAL.** As used in this section, "Commercial Material" means anything that the Contractor or a third party has developed at private expense and that is commercially available in the marketplace, subject to intellectual property rights, and readily susceptible to copying through duplication on magnetic media, paper, or other media. Examples include the written reports, books, pictures, videos, movies, computer programs, source code, and documentation.

Any Commercial Material that the Contractor intends to deliver as a Deliverable must have the scope of the license granted in such material disclosed in an Exhibit to this Contract, if that scope of license is different than the scope of license contained in this section for Commercial Materials.

Except for Commercial Material that is software ("Commercial Software"), if the Commercial Material is copyrighted and published material, then the State will have the rights permitted under the federal copyright laws for each copy of the Commercial Material delivered to it by the Contractor.

Except for Commercial Software, if the Commercial Material is patented, then the State will have the rights permitted under the federal patent laws for each copy of the Commercial Material delivered to it by the Contractor.

For Commercial Software, the State will have the following, perpetual rights, subject to the next paragraph. The State may:

(1) Use and copy the Commercial Software for use in or with the computer or computers for which it was acquired, including use at any State installation to which such computer or computers may be transferred;

(2) Use or copy the Commercial Software for use with a backup computer for disaster recovery and disaster recovery testing purposes or if any computer for which it was acquired is inoperative;
(3) Reproduce the Commercial Software for archival, image management, and backup purposes;
(4) Modify, adapt, and combine the Commercial Software with other computer software, provided that the modified, combined, and adapted portions of the derivative software incorporating any of the Commercial Software will be subject to same restrictions on use;
(5) Disclose to and reproduce the Commercial Software for use on behalf of the State by support service contractors or their subcontractors, subject to the same restrictions on use; and
(6) Use or copy the Commercial Software for use with a replacement computer.

In the case of any other scope of license (e.g., MIPs, tier, concurrent users, enterprise, site, or otherwise), the foregoing will apply except as expressly modified by the applicable license description, which must be incorporated as part of Exhibit I. If the Contractor provides greater license rights in an item included in Exhibit I to its general customer base for the Software's list price, those additional license rights also will be provided to the State without additional cost or obligation. No license description may reduce the rights in items 1 through 6 above; it may only define the extent of use, if the use is other than a CPU license.

The State will treat any Commercial Software as Confidential Information, in accordance with the requirements of the Confidential Information section of this Contract, if the Commercial Software is clearly and conspicuously labeled as confidential or secret.

5.2 **CUSTOM DELIVERABLES.** All custom work done by the Contractor and covered by this Contract will belong to the State, with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's work under this Contract being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor grants the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from the State for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable.

Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

5.3 **CONFIDENTIALITY.** The State may disclose to the Contractor written material or oral or other information that the State treats as confidential ("Confidential Information"). Title to the Confidential Information and all related materials and documentation the State delivers to the Contractor will remain with the State. The Contractor must treat such Confidential Information as secret if it is so marked, otherwise identified as such, or when, by its very nature, it deals with matters that, if generally known, would be damaging to the best interests of the public, other contractors or potential contractors with the State, or individuals or organizations about whom the State keeps information. The Contractor may not disclose any Confidential Information to third parties and must use it solely to perform under this Contract.

If any Deliverables contain data, documentation, or other written information that is confidential in nature and properly labeled as such, then it also will be Confidential Information for purposes of this

section. The State will keep all such Confidential Information in confidence and will not use it other than as authorized under this Contract. Nor will the State disclose any such Confidential Information to any third party without first obligating the third party to maintain the secrecy of the Confidential Information.

If one party discloses Confidential Information ("Disclosing Party") to the other party to this Contract ("Receiving Party"), the Receiving Party's obligation to maintain the confidentiality of the Confidential Information will not apply where such:

(1) Was already in the possession of the Receiving Party without an obligation of confidence;
(2) Is independently developed by the Receiving Party, provided documentary evidence exists to support the independent development;
(3) Except as provided in the next paragraph, is or becomes publicly available without a breach of this Contract;
(4) Is rightfully received by the Receiving Party from a third party without an obligation of confidence;
5) Is disclosed by the Receiving Party with the written consent of the Disclosing Party; or
(6) Is released under a valid order of a court or governmental agency, provided that the Receiving Party:

(a) Notifies the Disclosing Party of the order immediately upon receipt of it; and
(b) Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting the disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

Information that may be available publicly through other sources about people that is personal in nature, such as medical records, addresses, phone numbers, social security numbers, and similar things are nevertheless sensitive in nature and may not be disclosed or used in any manner except as expressly authorized in this Contract. Therefore, item (3) in the preceding paragraph does not apply, and the Contractor must treat such information as Confidential Information whether it is available elsewhere or not.

Except for Confidential Information that the Contractor delivers to the State and that is part of a Deliverable or necessary for the proper use or maintenance of a Deliverable, the Receiving Party must return all originals of any Confidential Information and destroy any copies it has made on termination or expiration of this Contract.

The disclosure of the Confidential Information of the Disclosing Party in a manner inconsistent with the terms of this provision may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and each Receiving Party agrees that in the event of a breach of the Receiving Party's obligations hereunder, the Disclosing Party will be entitled to temporary and permanent injunctive relief to enforce the provisions of this Contract without the necessity of proving actual damages. However, provision does not diminish or alter any right to claim and recover damages.

5.4 **Use of Name.** The Contractor may not publicize that it is doing business with the State or use this Contract or the Contractor's relationship with the State as a marketing or sales tool, unless the State agrees otherwise in writing. The State has no obligation to agree to any such advertising, publicity, sales, or marketing activities.

6 – Transaction Reporting

6.1 **Contractor's Sales Report.** The Contractor must report the quarterly dollar value (in US currency rounded to the nearest whole dollar) of the sales under this Contract each calendar quarter (i.e., January-March, April-June, July-September and October-December). The dollar value of the sales reported must equal the price paid by all State agencies and Political Subdivisions for Deliverables under this Contract during the reporting period.

The Contractor must report the quarterly dollar value of sales to the State via the Internet using the Web form at the Department of Administrative Services, OIT vendor portal, https://cm.ohio.gov. If no sales occur, the Contractor must show zero sales on the report. The report must be submitted 30 days after the completion of the reporting period.

The Contractor also must submit a closeout report within 120 days after the expiration of this Contract. The Contract expires on the physical completion of the last, outstanding task or delivery order of the Contract. The closeout report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all Contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero sales in the closeout report.

If the Contractor fails to submit any sales report in a timely manner or falsifies any sales report, the State may terminate this Contract for cause.

6.2 **Contractor's REVENUE SHARE.** The Contractor must pay the State a share of the sales transacted under this Contract. The Contractor must remit the revenue share in US dollars within 30 days after the end of the quarterly reporting period. The revenue share that the Contractor must pay equals .0075 of the total quarterly sales reported. The revenue share is included in the prices reflected on Exhibit I and reflected in the total amount charged to ordering activities, and the Contractor may not add a surcharge to orders under this Contract to cover the cost of the revenue share.

The Contractor must remit any amount due as the result of a quarterly or closeout report at the time the quarterly or closeout report is submitted to the Department of Administrative Services, Office of State Purchasing. The Contractor also must pay the revenue share by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the applicable State Term Contract Number, total report amount, and reporting period covered.

The Contractor must make each check payable to "Treasurer, State of Ohio", and forward it to the following address:

Department of Administrative Services
GSD Business Office
4200 Surface Road
Columbus, OH 43228

If the full amount of the revenue share is not paid within 30 days after the end of the applicable reporting period, the non-payment will constitute a contract debt to the State. The State may setoff any unpaid revenue share from any amount owed to the Contractor under this Contract and employ all other remedies available to it under Ohio law for the non-payment of the revenue share. Additionally, if the Contractor fails to pay the revenue share in a timely manner, the failure will be a breach of this Contract, and the State may terminate this Contract for cause and seek damages for the breach.

7 - WARRANTIES AND LIABILITIES

7.1 **WARRANTIES.** The Contractor warrants that the recommendations, guidance, and performance of the Contractor and all Deliverables under this Contract will:

(a) Be in accordance with the sound professional standards and the requirements of this Contract and without any material defects;
(b) Not infringe on the intellectual property rights of any third party;
(c) Be the work solely of the Contractor, unless otherwise provided in this Contract; and
(d) Be merchantable and fit for the particular purpose for which the Deliverables were acquired.

Additionally, with respect to the Contractor's activities under this Contract, the Contractor warrants that:

(a) The Contractor has the right to enter into this Contract;
(b) The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract;

(c) The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control;
(d) The Contractor has good and marketable title to any products delivered under this Contract and in which title passes to the State; and
(e) The Contractor has the right and ability to grant the license provided in any Deliverable in which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor must correct such failure with all due speed, not to exceed 30 days, or refund the amount of the compensation paid for the Deliverable. The Contractor also must indemnify the State for any direct damages and any claims by third parties based on any breach of these warranties.

7.2 **SOFTWARE WARRANTY.** If Exhibit I includes work to develop custom software as a Deliverable, then on delivery and for one year after the date of acceptance of any Deliverable that includes custom software, the Contractor warrants that:

(a) The software will operate on the computer(s) for which the software is intended in the manner described in the relevant software documentation;
(b) The software will be free of material defects;
(c) The contractor will place the source code with a registered Escrow vendor and will maintain relevant and complete software documentation, commentary, and source code;
(d) The source code language used to code the software is readily available in the commercial market, widely used and accepted for the type of programming involved, and support programming in the language is reasonably available in the open market; and
(e) The software and all maintenance will be provided in a professional, timely, and efficient manner.

For Commercial Software developed by the Contractor or licensed from a third party, the Contractor represents and warrants that it either has the right or has obtained a binding commitment from the third party licensor to make the following warranties and commit to the following maintenance obligations. During the warranty period described in the next paragraph, the Contractor must:

(a) Maintain or cause the third-party licensor to maintain the Commercial Software so that it operates in the manner described in its documentation;
(b) Supply technical bulletins and updated user guides;
(c) Supply the State with all updates, improvements, enhancements, and modifications to the Commercial Software and documentation and, if available, the commentary and the source code;
(d) Correct or replace the software and remedy any material programming error that is attributable to the Contractor or the third-party licensor; and
(e) Maintain or obtain a commitment from the third-party licensor to maintain the Commercial Software so that it will properly operate in conjunction with changes in the operating environment for which it was designed.

For Commercial Software designed for mainframe platforms and for Commercial Software designed for PC or PC-based servers and costing more than $10,000.00 per license or per copy, the warranty period will be the longer of one year after acceptance or the licensor's standard warranty period. For Commercial Software designed for PC or PC-based servers and costing less than $10,000.00 per license or per copy, the warranty period will be the longer of three months after acceptance or the licensor's standard warranty period. For PC and PC-based servers, the warranty will not include updates, improvements, enhancements, or modifications to the Commercial Software and documentation, if such are not provided as part of the licensor's standard warranty or license fee.

Software documentation means well written, readily understood, clear, and concise instructions for the software's users as well as a system administrator. The software documentation must provide the users of the software with meaningful instructions on how to take full advantage of all of the capabilities designed for end users. It also means installation and system administration

documentation for a system administrator to allow proper control, configuration, and management of the software. Source code means the uncompiled operating instructions. The Contractor must provide the source code in the language in which it was written and must include such commentary or annotations as would allow a competent programmer proficient in the source language to readily interpret the source code and understand the purpose of all routines and subroutines contained within the source code.

7.3 **EQUIPMENT WARRANTY.** If any computer hardware or other type of electrical equipment ("Equipment") will be a part of any Deliverable, the following warranties apply. The Contractor warrants that the Equipment fully complies with all government environmental and safety standards applicable to the Equipment. The Contractor also warrants for the warranty period described in the next paragraph that the Equipment will perform substantially in accordance with its user manuals, technical materials, and related writings published by the manufacturer with respect to such Equipment, and that such Equipment will achieve any function described in such writings. The foregoing warranty will not apply to Equipment that the State modifies or damages after title passes to it. The warranty period for all Equipment will be the longer of one year after the State accepts the Equipment or the Contractor's standard warranty period.

If any Equipment does not meet the above warranties during the applicable warranty period, the Contractor must fix the nonconforming Equipment so it performs substantially in accordance with its user manuals, technical materials, and related publications, replace the Equipment, or grant the State a refund equal to the amount it paid for the Equipment. The Contractor must either fix or replace the Equipment or refund the purchase price to the State with all due speed, not to exceed seven days in the case of a fix or a replacement or 30 days in the case of a refund. The Contractor will be responsible for all shipping costs associate with fixing, replacing, or returning any defective equipment.

7.4 **INDEMNITY.** The Contractor must indemnify the State against all liability or expense resulting from bodily injury to any person (including injury resulting in death) or damage to property arising out of its performance under this Contract, provided such bodily injury or property damage is due to the negligence or other tortious conduct of the Contractor, its employees, agents, or subcontractors. The Contractor also must indemnify the State against any claim of infringement of a copyright, patent, trade secret, or other intellectual property rights based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified the Deliverable and the claim of infringement is based on the modification. The State will give the Contractor notice of any such claim as soon as reasonably practicable. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor will do one of the following four things:

(a) Modify the Deliverable so that it is no longer infringing;
(b) Replace the Deliverable with an equivalent or better item;
(c) Acquire the right for the State to use the Deliverable as it was intended for the State to use under this Contract; or
(d) Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

7.5 **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT OR ANYTHING INCORPORATED BY REFERENCE INTO THIS CONTRACT, THE PARTIES AGREE AS FOLLOWS:

(a) NEITHER PARTY WILL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOST PROFITS, EVEN IF THE PARTIES HAVE BEEN ADVISED, KNEW, OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

(b) THE CONTRACTOR WILL BE LIABLE FOR ALL DIRECT DAMAGES DUE TO THE FAULT OR NEGLIGENCE OF THE CONTRACTOR OR ITS BREACH OF ANY PROVISION OF THIS CONTRACT.

8 - MAINTENANCE

8.1 **SOFTWARE MAINTENANCE.** If this Contract involves any custom software as a Deliverable, then during the warranty period, the Contractor must correct any material programming errors that are attributable to the Contractor within a reasonable time, provided the State notifies the Contractor, either orally or in writing, of a problem with the software and provides sufficient information to identify the problem. The Contractor's response to a programming error will depend upon the severity of the problem. In the case of programming errors that slow the processing of data by a small degree, render minor and non-critical functions of the System inoperable or unstable, or require users or administrations to employ workarounds to fully use the software, the Contractor must respond to requests for resolution within four business hours and begin working on a proper solution within one business day, dedicating the resources of one qualified programmer full-time to fixing the problem. In the case of any defects with more significant consequences, including those that render key functions of the software inoperable or significantly slow data processing, the Contractor must respond within two business hours of notification and, if requested, provide on-site assistance and dedicate all available resources to resolving the problem.

For Commercial Software other than PC or PC-based server software costing less than $10,000.00 per copy or license, the Contractor must provide maintenance during the warranty period at no cost to the State. At a minimum, that maintenance must be the standard maintenance program that the licensor, whether the Contractor or a third party, normally provides to its client base. That maintenance program must include all new releases, updates, patches, and fixes to the Commercial Software. It also must include a commitment to keep the software current with the operating environment in which it is designed to function and a commitment to promptly correct all material defects in the software.

Additionally, the Contractor will make (or obtain a commitment from the third-party licensor to make) maintenance available for the software for at least five years after the warranty period. If the licensor, whether it is the Contractor or a third-party, is unable to provide maintenance during that period, then the licensor must do one of the following things: (a) give the State a *pro rata* refund of the license fee based on a five-year useful life; or (b) release the source code for the software to the State for use by the State solely for the purpose of maintaining any copies of the software for which the State has a proper license. The State will treat the source code as Confidential Information under the Confidentiality Section of this Contract. In the case of third-party Commercial Software, the Contractor warrants that it has legally bound the third-party licensor to the obligations of this Contract or that the Contractor has the right to make these commitments directly to the State.

For Commercial Software designed for PC or PC-based server platforms and costing less than $10,000.00 per copy or license, the Contractor must provide the same maintenance and user assistance during the warranty period at no additional cost to the State as the Contractor or the third-party licensor makes generally available at no additional charge to its other customers.

8.2 **SOFTWARE UPGRADES.** After an initial acquisition of a license in Commercial Software, the State may want to acquire a broader license than the original. Or the State may later want to migrate to another platform for the Commercial Software. When the Contractor or third-party licensor make the broader license generally available to its customer base or makes the version of the Commercial Software that runs on the new platform to which the State wants to migrate, then the State will have a right to upgrade any of its licenses to that broader license or to acquire the version of the Software that is appropriate for the new platform that the State intends to use. In these cases, the Contractor will provide the broader license or other version of the Commercial Software in exchange for a license fee that is based on the lesser of the following:

(a) The Contractor's (or third party licensor's) standard upgrade or migration fee;
(b) The upgrade or migration fee in Exhibit I; or
(c) The difference between the license fee originally paid and the then-current license fee for the license or version of the Commercial Software that the State seeks to acquire.

The foregoing will not apply to Commercial Software for PCs and PC-based server software with a license fee of less than $10,000.00, unless the Contractor or third-party licensor makes upgrade packages available for the Commercial Software to other customers. If PC or PC-based server software upgrades are available, the State will be entitled to the most favorable license fee on which such are made available to other most favored customers or dealers, as appropriate.

8.3 **EQUIPMENT MAINTENANCE.** If this Contract involves computer or telecommunications hardware or other mechanical or electrical equipment ("Equipment") as a Deliverable, then, during the warranty period and during any period covered by annual maintenance, the Contractor must provide maintenance to keep the Equipment in or restore the Equipment to good working order. This maintenance must include preventative and remedial maintenance, installation of safety changes, and installation of engineering changes based upon the specific needs of the individual item of Equipment. This maintenance also must include the repair, replacement, or exchange deemed necessary to keep the Equipment in good working order. For purposes of this Contract, Equipment restored to good working order means Equipment that performs in accordance with the manufacturer's published specifications. The Contractor must use its best efforts to perform all fault isolation and problem determination attributed to the Equipment. The following services are outside the scope of this Contract:

(a) Maintenance to bring the Equipment into compliance with any law, rule, or regulation, if such law, rule, or regulation was not in effect on the acceptance date;
(b) Repair and replacement work or increase in maintenance time as a result of damage or loss resulting from accident, casualty, neglect, misuse, or abuse, if such is the State's fault (and beyond normal wear and tear), damage resulting from improper packing or failure to follow prescribed shipping instruction (If such is done by the State), failure of electrical power, air conditioning or humidity control, use of supplies not approved by the original manufacturer of the Equipment as describe in the Equipment's documentation, or causes other than ordinary use of Equipment;
(c) Furnishing platens, supplies, or accessories, making specification changes, or adding or removing approved accessories, attachments, or other devices except as permitted in the Equipment's user documentation;
(d) Maintenance or increased maintenance time resulting from any improper use, maintenance, or connection to other equipment (not done by the Contractor) that results in damage to the Equipment;
(e) Repairs needed to restore the Equipment to good operating condition if the Equipment has been damaged by anyone other than the Contractor's authorized service personnel repairing, modifying, or performing maintenance on the Equipment.

8.4 **EQUIPMENT MAINTENANCE STANDARDS.** Except in the case of excusable delay, remedial Equipment maintenance by the Contractor will be completed within eight business hours after notification by the State that maintenance is required. In the case of preventative maintenance, the Contractor will perform such in accordance with the manufacturer's published schedule and specifications. If maintenance is not completed within eight hours after notification by the State, the Contractor will be in default. Failure of the Contractor to meet or maintain these requirements will provide the State with the same rights and remedies as specified elsewhere in this Contract for default, except that the Contractor will only have eight hours to remedy a default. The Contractor will provide adequate staff to provide the maintenance required by this Contract.

8.5 **EQUIPMENT MAINTENANCE CONTINUITY.** If the Contractor is unable to provide Equipment maintenance to meet the State's ongoing performance requirements and if, in the State's sole opinion, the Contractor is unlikely to resume providing warranty services that meets the State's ongoing performance requirement, the Contractor will be in default, and the State will be entitled to the remedies in the default section of this Contract. The State will also be entitled to the following items from the Contractor:

(a) All information necessary for the State to perform the maintenance, including but not limited to logic diagrams, maintenance manuals, and system and unit schematics, with all changes noted;
(b) A listing of suppliers capable of supplying necessary spare parts;
(c) Adequate information to permit the State to have spare parts manufactured elsewhere; and

(d) A listing of spare parts and their recommended replacement schedule to enable the State to create a centralized inventory of spare parts.

The State will treat as Confidential Information in accordance with the Confidentiality Section of this Contract any information in items (a) through (d) above that the Contractor rightfully identifies in writing as confidential. And when disclosure to a third-party is necessary for the State to continue the maintenance, the State will require any third-party to whom disclosure is made to agree to hold the Confidential Information in confidence and to make no further disclosure of it. Further, the State agrees that any such Confidential Information will be used solely to perform maintenance for the State and will be returned to the Contractor or destroyed when such use is no longer needed.

8.6 **PRINCIPAL PERIOD OF MAINTENANCE (GENERAL).** Software and Equipment maintenance must be available nine working hours per weekday, between 8:00 a.m. and 5:00 p.m. Eastern Standard Time. Travel time and expenses related to remedial and preventative maintenance will not be billable and must be included in the price of the maintenance.

8.7 **MAINTENANCE ACCESS (GENERAL).** For all Software and Equipment maintenance under this Contract, the State will provide the Contractor with reasonable access to the Deliverable to perform maintenance. All maintenance that requires a Deliverable to be inoperable must be performed outside the State's customary working hours, except when the Deliverable is already inoperable. Preventative or scheduled maintenance must be performed at mutually agreeable times, within the parameters of the manufacturer's published schedule.

9 - ASSIGNMENT AND SUBCONTRACTING

9.1 **ASSIGNMENT.** The Contractor may not assign this Contract without the written consent of the State, which the State will not be obligated to provide.

9.2 **SUBCONTRACTING.** The State recognizes that it may be necessary for the Contractor to use subcontractors to perform portions of the work under this Contract. In those circumstances, before the Contractor engages any such subcontractor, the Contractor must submit a list identifying its subcontractors or joint venture partners performing portions of the work under the Contract. If any changes to that list occur during the term of the Contract, the Contractor must immediately provide the State an updated list of subcontractors or joint venture business partners. In addition, all subcontractors and joint venture business partners must agree in writing to be bound by all of the terms and conditions of this Contract and any specifications of any order under this Contract for which they perform work. The State may reject any subcontractor submitted by the Contractor.

10 – CONSTRUCTION

10.1 **HEADINGS.** The headings used in this Contract are for convenience only and may not be used in interpreting this Contract.

10.2 **ENTIRE DOCUMENT.** This Contract, which includes the Contractor's pricelist attached as Exhibit I and all documents referred to in this Contract, constitutes the entire agreement between the parties with respect to the subject matter and supersedes any previous agreements, whether oral or written.

10.3 **BINDING EFFECT.** This Contract will be binding on and benefit the respective successors and assigns of the State and the Contractor.

10.4 **AMENDMENTS – WAIVER.** No amendment or modification of this Contract will be effective unless it is in writing and signed by both parties. The failure of either party at any time to demand strict performance by the other party of any of the terms or conditions of this Contract may not be construed as a waiver of any those terms or conditions, and either party may at any time demand strict and complete performance by the other party.

10.5 **SEVERABILITY.** If a court of competent jurisdiction finds any provision of this Contract to be unenforceable, the remaining provisions of this Contract will remain in full force and affect.

10.6 **CONSTRUCTION.** This Contract must be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

10.7 **NOTICES.** For any notice under this Contract to be effective, the noticing party must make it in writing and sent it to the address of the other party first appearing above, unless that party has notified the other party, in writing and in accordance with the provisions of this section, of a new mailing address for the receipt of notices. This notice requirement will not apply to any notices that this Contract expressly authorizes to be made orally.

10.8 **CONTINUING OBLIGATIONS.** Any terms, conditions, representations, or warranties contained in this Contract that must survive termination or expiration of this Contract to be fully effective will survive the termination or expiration of the Contract. Additionally, termination or expiration of this Contract will not affect the State's right to continue to use any Deliverable for which it has paid, including licensed material. And no termination or expiration of the Contract will affect the State's right to receive maintenance, warranty work, or other services for which the State has paid.

10.9 **PRIORITY.** If there is any inconsistency or conflict between this document and any provision of anything incorporated by reference, this document will prevail.

10.10 **DAYS.** When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

11 - LAW AND COURTS

11.1 **EEO.** The Contractor must comply with all Ohio laws regarding equal employment opportunity, including among others Code § 125.111, as well as all related Executive Orders of the Governor of Ohio.

11.2 **DRUG FREE WORKPLACE.** The Contractor must comply with all Ohio laws regarding maintaining a drug-free workplace and make a good faith effort to ensure that all its employees do not possess and are not under influence of illegal drugs or alcohol or abuse prescription drugs while working on State property.

11.3 **OHIO ETHICS LAW AND LIMITS ON POLITICAL CONTRIBUTIONS.** The Contractor certifies that it is currently in compliance and will continue to adhere to the requirements of the Ohio ethics laws. In accordance with Executive Order 2007-01S, the Contractor, by signature on this document, certifies: (1) it has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflicts of interest laws, and (3) will take no action inconsistent with those laws and this order. The Contractor understands that failure to comply with Executive Order 2007-01S is, in itself, grounds for termination of this Contract and may result in the loss of other contracts or grants with the State. The Contractor hereby certifies that all applicable parties listed in Division (I)(3) or (J)(3) of Ohio Revised Code Section 3517.13 are in full compliance with Divisions (I)(1) and (J)(1) of Ohio Revised Code Section 3517.13.

11.4 **SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor must comply with all applicable State rules, policies, and regulations regarding data security and integrity. And when on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.

11.5 **LAW AND VENUE.** This Contract is governed by and will be construed under Ohio law, and venue for all disputes will lie exclusively with the appropriate court in Franklin County, Ohio.

11.6 **UNRESOLVED FINDINGS.** The Contractor represents that it is not subject to an unresolved finding for recovery under Code § 9.24. If this warranty proves false when the parties sign this Contract, the Contract will be void. Additionally, if this representation proves false on the date of any renewal or extension of the Contract, the renewal or extension will be void.

11.7 **TERROR DECLARATION.** In accordance with R.C. 2909.33(C), Contractor certifies that it meets one of the following conditions:

(a) Contractor has **not** received, nor will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars ($100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year;
or

(b) (1) Contractor has received, or will receive as a result of this contract, an aggregate amount greater than one hundred thousand dollars ($100,000) in business or funding, excluding personal benefits, from the state, instrumentalities, or political subdivisions during the current fiscal year.
and,

(2) Contractor has either precertified with the Office of Budget and Management, or has completed the attached Declaration of Material Assistance form certifying that Contractor has not provided material assistance to any organization on the Terrorist Exclusion List, as that term is defined in R.C. 2909.21.

11.7 **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.

TO SHOW THEIR AGREEMENT, the parties have executed this Contract on the date(s) identified below, and this Contract will be effective as of the date it is signed on behalf of the State.

CONTRACTOR	**STATE OF OHIO,** **DEPARTMENT OF ADMINISTRATIVE SERVICES** **OFFICE OF STATE PURCHASING**
BY: Mimi Boyjton	**BY:** Hugh Quill/SAM **HUGH QUILL DIRECTOR,** **DEPARTMENT OF ADMINISTRATIVE SERVICES**
DATE: 12/01/2009	**DATE:** 12-7-09

Exhibit I

Product Name	Manufacturer	Manufacturer Part No	Vendor Part No	Description	Unit of Measure	State Price
netDMS Imaging and Document Management Software	Vista Solutions Group	DMS100	DMS100	Document Management & Imaging Software (1-5 User Licenses)	5	$ 12,475.00
netDMS Imaging and Document Management Software	Vista Solutions Group	DMS101	DMS101	Document Management & Imaging Software (6-10 User Licenses)	10	$ 19,950.00
netDMS Imaging and Document Management Software	Vista Solutions Group	DMS102	DMS102	Document Management & Imaging Software (11-25 User Licenses)	25	$ 37,500.00
netDMS Imaging and Document Management Software	Vista Solutions Group	DMS103	DMS103	Document Management & Imaging Software (26-50 User Licenses)	50	$ 62,500.00
netDMS Imaging and Document Management Software CourtView DocLink	Vista Solutions Group	DMSCT100	DMSCT100	Establishes data connections, project categories, document types, index field mapping (1-5 User Licenses)	5	$ 1,000.00
netDMS Imaging and Document Management Software CourtView DocLink	Vista Solutions Group	DMSCT101	DMSCT101	Establishes data connections, project categories, document types, index field mapping (6-10 User Licenses)	10	$ 2,000.00
netDMS Imaging and Document Management Software CourtView DocLink	Vista Solutions Group	DMSCT102	DMSCT102	Establishes data connections, project categories, document types, index field mapping (11-25 User Licenses)	25	$ 4,000.00
netDMS Imaging and Document Management Software CourtView DocLink	Vista Solutions Group	DMSCT103	DMSCT103	Establishes data connections, project categories, document types, index field mapping (26-50 User Licenses)	50	$ 6,000.00
netDMS Imaging and Document Management Software CourtView DocLink	Vista Solutions Group	DMSCT104	DMSCT104	Establishes data connections, project categories, document types, index field mapping (51-75 User Licenses)	75	$ 8,000.00
netDMS Imaging and Document Management Software CourtView DocLink	Vista Solutions Group	DMSCT105	DMSCT105	Establishes data connections, project categories, document types, index field mapping (76-100 User Licenses)	100	$ 10,000.00
netDMS Imaging and Document Management Software CourtView DocLink	Vista Solutions Group	DMSCT106	DMSCT106	Establishes data connections, project categories, document types, index field mapping (Site License)	1	$ 15,000.00
netDMS Workflow Automation Push & Event Server	Vista Solutions Group	DMS112	DMS112	Site License	1	$ 9,995.00
netDMS Workflow Automation Graphical Workflow Builder	Vista Solutions Group	DMS113	DMS113	Site License	1	$ 9,995.00
netDMS Workflow Automation Escalation Server	Vista Solutions Group	DMS114	DMS114	Site License	1	$ 4,995.00
netDMS Workflow Automation Import Server	Vista Solutions Group	DMS115	DMS115	Site License	1	$ 4,995.00
eDocket Judges Dashboard	Vista Solutions Group	ed100	ed100	Single Interface connecting CMS and DMS	1	$ 39,995.00
AppealsCreator	Vista Solutions Group	ac100	ac100	Site License	1	$ 5,995.00
FormsGen Capture/eCitation	Vista Solutions Group	fg100	fg100	Site License	1	$ 7,995.00
Conversion Server	Vista Solutions Group	cs100	cs100	Site License	1	$ 4,995.00
Signature Solutions	Vista Solutions Group	js100	js100	Digital Signatures	1	$ 9,995.00
QueueView	Vista Solutions Group	qv100	qv100	Site License	1	$ 7,995.00
Microfilm Export Server	Vista Solutions Group	es100	es100	Site License	1	$ 5,995.00
Managed Services	Vista Solutions Group	ms100	ms100	Site License	1	$ 1,695.00
BarCode Server	Vista Solutions Group	bc100	bc100	Site License	per server	$ 7,995.00
ISIS/TWAINScan Module	Vista Solutions Group	sc100	sc100	Site License	1	$ 4,995.00
Standard Automated Redaction Server (IDentiHide)	Vista Solutions Group	id100	id100	Template and Mask Redaction Only	1	$ 9,995.00
Automated Redaction Server (IDentiHide)	Vista Solutions Group	id101	id101	Proximity Redaction	1	$ 34,995.00
ABBY FineReader License	Vista Solutions Group	abb100	abb100	Site License	per processor	$ 8,500.00

eUniversa Pro Se Access to Justice® Publishing Utility	Vista Solutions Group	propub	propub	Site License	1	$ 19,995.00
eUniversa Pro Se Administrator	Vista Solutions Group	proadmin	proadm	Site License	1	$ 29,995.00
eUniversa Pro Se Document Server Engine	Vista Solutions Group	prodoc	prodoc	Site License	1	$ 49,995.00
eUniversa Pro Se Landlord/Tennant Filings, Small Claims	Vista Solutions Group	profile	profile	Site License	1	$ 19,995.00
eUniversa eFile Server XML Processor	Vista Solutions Group	proproc	proproc	Site License	1	$ 19,995.00
eUniversa eFile Acceptance Queue	Vista Solutions Group	proacc	proacc	Site License	1	$ 29,995.00
eUniversa eFile ECF 3.1 Connector - CMS	Vista Solutions Group	procms	procms	Site License	per CMS	$ 49,995.00
eUniversa eFile ECF 3.1 Connector - DMS	Vista Solutions Group	prodms	prodms	Site License	per DMS	$ 29,995.00
Support	Vista Solutions Group	2009-Support	2009-Support	Support Minimum Education: BS/BA required in appropriate field. Manufacturer Certifications including Microsoft Certified Professional and minimum 3 years professional experience in OCR and Database Management	hr	$ 110.00
Business Analyst	Vista Solutions Group	2009-Business Analyst	2009-Business Analyst	Business Analyst Minimum Education: BS/BA in appropriate field. Manufacturer's Certfications including Microsoft Certified Professional and minimum 6 years professional experience in related field.	hr	$ 125.00
IT Assistance	Vista Solutions Group	2009-IT Assistance	2009-IT Assistance	IT Assistance Minimum AS in related field. Manufacturer's Certifications and minimum 2 years professional experience in related field.	hr	$ 115.00
IT Development	Vista Solutions Group	2009-IT Development	2009-IT Development	IT Development Bachelor's degree in MIS or CS or equivalent job experience, 5+ years development experience	hr	$ 125.00
Project Management	Vista Solutions Group	2009-Project Management	2009-Project Management	Project Management BA/BS in appropriate field. Manufacturer's Certifications including Microsoft Certified Professional and minimum 7 years professional experience in field.	hr	$ 130.00
Implementation Specialist I	Vista Solutions Group	2009-Implementation Specialist I	2009-Implementation Specialist I	Implementation Specialist Minimum Education: BS/BA required in appropriate field. Manufacturer Certifications and minimum 3 years professional experience in field.	hr	$ 115.00
Implementation Specialist II	Vista Solutions Group	2009-Implementation Specialist II	2009-Implementation Specialist II	Implementation Specialist Minimum Education: BS/BA required in appropriate field. Manufacturer Certifications and Microsoft Certified Professional minimum 7 years professional experience in field.	hr	$ 140.00
Trainer	Vista Solutions Group	2009-Trainer	2009-Traner	Trainer Minimum Education: BS/BA required in appropriate field. Manufacturer's Certifications and minimum 5 years professional experience in field	hr	$ 115.00
Annual Software Support	Vista Solutions Group	2009-Annual Support	2009-Annual Support	Annual Software Support	1	15%

VISTA SOLUTIONS GROUP
AGREEMENT FOR SOFTWARE AND SERVICES
General Terms and Conditions

1. General

These General Terms and Conditions are intended to provide for terms that are common to the Software Support Attachment, the Professional Services Attachment, and any other attachments and schedules which incorporate these terms and conditions. Accordingly, in the case of any conflict between the General Terms and Conditions and any Attachment or schedule, the State Term Schedule terms and conditions shall control and govern, unless otherwise expressly stated to the contrary.

2. Warranty

2.1. Software Warranty: The Customer has ordered Software. VistaSG warrants that the Software and media will perform substantially in accordance with documentation for a period of ninety (90) days from the delivery of the Software and media to Customer. VistaSG does not warrant the Software to be error-free or operate without interruption. Customer's remedy for breach of this warranty shall be to notify VistaSG of the problem, in which event VistaSG shall, as authorized contractor for Exigen, repair or replace the defective Software. Exigen, as developer of VistaSG, will provide the replacement Software to remedy the breach of warranty.

2.2. Services Warranty: If the Customer has ordered Professional Services and the Professional Services Attachment has been executed, VistaSG warrants that Services provided under this Agreement will be performed in a professional and competent manner in conformance with industry standards. Customer must report in writing any deficiencies within thirty (30) days of performance of the Services. For any breach of this Services Warranty, Customer's remedy and VistaSG's liability shall be re-performance of the Services. If VistaSG is unable to re-perform the Services, Customer shall be entitled to recover all fees paid for the deficient Services.

2.3. Confidential Information. Certain information, product development plans, methods, techniques, drawings, processes, or portions thereof supplied by one party (the "Disclosing Party") are trade secrets and Confidential Information ("Confidential Information") of the Disclosing Party. The Software and the documentation thereof, is the Confidential Information of VistaSG or its suppliers and are furnished solely to assist Customer in the use of the Software. Confidential Information includes any non-public information that is of value to the Disclosing Party or is otherwise treated as confidential and which is disclosed to the other party (the "Receiving Party"). The Receiving Party agrees to hold the Confidential Information disclosed by the Disclosing Party in strictest confidence and not to, directly or indirectly, copy, distribute, or otherwise disclose the Confidential Information to any third party. The Receiving Party shall not utilize the Confidential Information for any purpose whatsoever other than as expressly contemplated by this Agreement or any Attachment. This obligation shall continue for the term of the applicable Attachment and for a period of three years thereafter or such longer period of time as permitted by law. Because of the unique and proprietary nature of Confidential Information, the Receiving Party acknowledges that use or disclosure of Confidential Information would cause irreparable harm to the Disclosing Party. Accordingly, the parties agree that in such an event, any remedies at law for a breach will be inadequate and therefore, the Disclosing Party shall be entitled to seek equitable relief to protect its interests, as well as money damages. It is understood that the Clerk of the Circuit Court's obligations to maintain the confidentiality of software supplied by Vista Solutions Group is subject to the provisions of State Statutes for Project

2.4. Miscellaneous

(A) *Customer may not assign any of its rights or obligations hereunder except with VistaSG's prior written consent, and any attempted assignment shall be void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.*

(B) *All rights and remedies of the parties hereto are separate and cumulative. The waiver or failure of either party to exercise in any respect any right or remedy provided herein shall not be deemed a waiver of any further right or remedy hereunder.*

(C) *Except for the obligation to make payments, nonperformance of either party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the nonperforming party.*

(D) *This Agreement shall be subject to, governed by, and construed in accordance with the laws of the state of Ohio without regard to its rules governing conflicts of law and without regard to the United Nations Convention on Contracts for the International Sale of Goods. Customer consents and submits to the jurisdiction and venue of the County of Franklin in the State of Ohio over any action, suit or other legal action that may arise out of or in connection with this Agreement.*

(E) *Notices hereunder shall be sent to the addressees on the face of this Agreement, or to such other addresses as specified by a notice complying herewith, and shall be deemed received upon actual receipt (or independent confirmation thereof).*

(F) *Headings contained in this Agreement are for convenience only and are not part of this Agreement and do not in any way interpret, limit or amplify the scope, extent or intent of this Agreement or any of the provisions hereof.*

VISTA SOLUTIONS GROUP
AGREEMENT FOR SOFTWARE AND SERVICES
Software Support Attachment

This Software Support Attachment between VistaSG and Customer is an addendum to the Master Agreement between VistaSG and Customer. Customer agrees to the following terms and conditions which are incorporated in and made part of the Master Agreement. The parties acknowledge that the General Terms and Conditions contain provisions that govern the entire relationship between the parties. Accordingly, in the event of any conflict between the General Terms and Conditions and this Software Support Attachment, the State Term Schedule Terms and Conditions shall control and govern.

VistaSG agrees to provide to Customer the "Software Support Services" described below for the software for which software support services are elected (the "Covered Software"), in accordance with the following terms and conditions:

1. Software Support Services.

1.1. Hours of Service Availability. Payment of the standard Support Fees, as defined in State Term Schedule pricing, entitles Customer to Support Services during the Principal Period of Maintenance (PPM). PPM is 10 hours a day, five days a week while this Support Attachment is in effect.

1.2. Scope of Service. VistaSG will provide Support Services during the PPM as long as the Covered Software is at the current or the next most current revision level and operated in accordance with VistaSG's published specifications. Support Services are

(A) telephone support to help resolve software failures during the PPM; resolution may be delivered as a Software Maintenance Update (SMU), software bug fix module or workarounds;

(B) commercially reasonable efforts to report and test fixes to defects in the Covered Software that materially and adversely affect the efficiency or use of the Covered Software as described in VistaSG's written specifications; software program fixes will be provided for the current release only; and

(C) delivery and installation of all software revisions provided by vendors that VistaSG deems necessary with respect to the Covered Software; and VistaSG will use its reasonable efforts to render Support Services within a reasonable time.

1.3. Upgrades to Covered Software. During the PPM, VistaSG agrees to deliver to Customer without charge any upgrades containing error corrections or enhancements of the Covered Software ("Upgrades"). Support Services do include installation or implementation of any Upgrades. This would not include installation and training for newly purchased modules.

1.4. Service Limitations. Support Services are contingent upon the proper use of the Covered Software in accordance with VistaSG's published specifications and do not include any of the following, in the sole discretion or determination of VistaSG:

(A) service on Covered Software installed in unsafe or hazardous environments;

(B) service required by accident, neglect, alterations, improper use, or misuse of the Covered Software, or as necessitated by service or modifications attempted by non-VistaSG personnel;

(C) service to a version other than the current or the next most current version of the Covered Software;

(D) efforts to restore the software version and/or data beyond the most recent back-up;

(E) service related to software (or components thereof) other than the Covered Software;

(F) service related to unqualified products, either hardware or software, that are attached or installed in or to the Covered Software that have not been previously approved by VistaSG;

(G) service due to problems that are not directly caused by, or the direct result of the Covered Software, including failure of hardware or failure of Customer's operating system; or

(H) service due to problems attributable to third party hardware and/or software.

1.5. Priority Codes. Notwithstanding anything to the contrary contained in this Support Attachment, during the PPM, VistaSG shall use commercially reasonable efforts to respond to problems in accordance with the "Priority Codes" set forth below. The Priority Codes below depict the priority level to be assigned by VistaSG to each issue or problem phoned in by Customer.

"A Priority" - A Software error renders the Software inoperable. Resources assigned within two (2) hours after notice during PPM.

"B Priority" - A Software error is detected for a system module which seriously impairs system operations, but does not render it inoperable. Resources assigned within four (4) hours after notice during PPM.

"C Priority" - Minor problems which VistaSG does not plan to address in a future software release, to be generally resolved during PPM within 30 days.

"D Priority" - Minor problems which VistaSG plans, or will plan to incorporate into a future software release, to be resolved in connection with the general commercial availability of such future software release.

2. Customer's Responsibilities

2.1. Customer shall provide reasonable assistance to VistaSG in the performance of Support Services, including without limitation, providing VistaSG copies of all data and other files reasonably required to verify, reproduce, diagnose and resolve reported problems. Customer is responsible for maintenance and installation of any common carrier equipment or communication services related to or used by the Covered Software and not furnished by VistaSG, including without limitation, the necessary modem and remote access software reasonably specified by VistaSG for the purposes of providing dial-up access to VistaSG. Customer is responsible for charges incurred for communication facilities from Customer's facilities, whether incurred by Customer or by VistaSG's service representatives while performing service on the Covered Software. Customer is responsible for performing all system software backups and restoration of data. Customer is responsible for upgrading Customer's operating environment in the event that failure to do so affects the performance of the Software. Customer shall notify VistaSG of any Covered Software failure and shall allow VistaSG full and free access to the Covered Software for performing Support Services. Customer agrees that VistaSG shall have all rights and licenses of third parties necessary or appropriate for VistaSG to access the hardware and third party software in the performance of the Support Services. VistaSG shall not be responsible for loss of use arising from Customer's failure to fulfill its obligations under this Contract.

3. Alterations, Additions or Modifications

3.1. VistaSG will not be responsible to Customer for loss of use of the Covered Software or for any other liabilities arising from alterations, additions or modifications which are made to the Covered Software by other than authorized service representatives of VistaSG. If in the opinion of VistaSG, any such alteration, addition or modification adversely affects VistaSG's ability to render Support Services, VistaSG reserves the right to terminate this Support Attachment immediately upon written notice to Customer.

4. Term and Applicability to Other Attachments with VistaSG

4.1. . The term of service for upgrades and other software added as Covered Software shall be coterminous with the term of service applicable to the Covered Software initially covered.

5. Support Fees

5.1. Definition. "Support Fees" are the total annual charges designated as such on EXhbit 1 during the initial term. Support Fees cover Support Services performed at VistaSG's facilities.

5.2. **Invoices.** Support Fees shall first come due upon the one year anniversary after commencement of the initial term as provided in Exhbit 1 above. Support Fees for renewal terms shall be payable annually in U.S. Dollars, in advance. One-time charges will be invoiced by VistaSG as incurred. Partial year invoicing will be prorated on the basis of twelve thirty-day (30-day) months. Customer shall pay each Support Fee and all other invoice charges in full within forty-five (45) days after receipt of a proper invoice.

VISTA SOLUTIONS GROUP
AGREEMENT FOR SOFTWARE AND SERVICES
Professional Services Attachment

This Professional Services Attachment, between VistaSG and Customer is an addendum to the Master Agreement between VistaSG and Customer. Customer agrees to the following terms and conditions which are incorporated in and made a part of the Master Agreement. The parties acknowledge that the General Terms and Conditions contain provisions that govern the entire relationship between the parties. Accordingly, in the event of any conflict between the General Terms and Conditions and this Services Attachment, the General Terms and Conditions shall control and govern.

1. Services

1.1. Prior to commencing any Services, the Customer and VistaSG must agree to and execute a Statement of Work. Each time Customer desires to engage VistaSG to provide additional Professional Services to Customer, the parties will enter into another mutually agreed upon Statement of Work which is incorporated into the initial Statement of Work. The Statement of Work (as amended or supplemented from time to time) will at a minimum: (i) describe the specific Professional Services that VistaSG is to provide to Customer under that engagement, (ii) set forth the fees that Customer agrees to pay for those Professional Services (iii) set forth the time frame for performance of those Professional Services, and

1.2. Hours of Service: The VistaSG consultant will perform Professional Services during the hours of 8:00 am and 5:00 pm., local time, Monday through Friday, excluding VistaSG holidays, or at such other hours as the parties may mutually agree to.

1.3. Should an VistaSG consultant be unable to perform the Professional Services under this Services Attachment because of illness, resignation or other causes beyond VistaSG's control, VistaSG will attempt to replace such consultant within a reasonable time, but VistaSG shall not be liable for failure to replace such consultant within the schedule.

1.4. Customer shall furnish VistaSG, at Customer's expense, all technical data and information as may be determined by VistaSG to be necessary for the performance of the Professional Services. Customer shall grant VistaSG access to software or hardware at such times and as so configured as may be required for the adequate performance of the Professional Services. Customer agrees that VistaSG shall have all rights and licenses of third parties necessary or appropriate for VistaSG to access required hardware and software in the performance of the Professional Services.

2. Charges

2.1. Customer agrees to pay fees for the Services as provided on the Statement of Work. The Services are provided on a time and materials basis meaning that Customer shall pay VistaSG for all time spent performing the Services All charges and rates are exclusive of all sales, use and like taxes. .

3. Control and Supervision

3.1. It is the express intention of the parties that VistaSG (including, but not limited to, its employees and representatives) is an independent contractor and not an employee, agent, or partner of Customer. Nothing in this Agreement shall be interpreted as creating the relationship of employer and employee between VistaSG and Customer.

4. VistaSG Personnel

4.1. The parties recognize that VistaSG (and its employees and representatives) may perform services similar to the Professional Services from time to time for other parties. Accordingly, nothing in this Services Attachment (or the Agreement) shall prevent VistaSG from performing

such similar services or restrict VistaSG's use of the same employee(s) and representative(s) provided to Customer. VistaSG reserves the sole right to determine each assignment of VistaSG personnel under this Agreement or otherwise. Customer acknowledges and agrees that VistaSG employees are a valuable asset and difficult to replace. Accordingly, Customer agrees that, for a period of one year after the completion of the Services, it will not offer employment to any VistaSG employee involved in the provision of the Services.

1. Documentation Deliverables

VISTA-SG will provide the customer with the Standard Workflow Application Documentation, any custom documentation that is needed for training on the customer's specific workflow processes and the technical documentation described below. The following documentation will be delivered, in the format listed, prior to Final System Acceptance.

1.1. **Workflow End User System Documentation.** The standard workflow application end user system documentation will be furnished as a PDF file (UserGuide.pdf) and is installed as part of the Workflow Application Software. End user system documentation addresses the following topics:
(A) System Introduction/Overview
(B) Detailed operating instructions for the system modules. This includes Scanning, Indexing, Document Retrieval, Task Queue Processing and Inspection/QC, among others.

1.2. Workflow System Administration Documentation. The standard workflow application System Administration documentation installed as a PDF file (AdminManual.pdf) and addresses user configurable software items in the system and system setup and management tools including:
(A) Design and Maintenance of Projects
(B) System Setup (Users, Groups, Security Levels, Doc Types, etc.)
(C) Designing a Workflow (Creating Workflow Nodes and Routing Rules, etc.)
(D) Managing the Workflow (Monitoring and redistributing work)
(E) Reports and Statistical Analysis Tools
(F) Process Monitor (Monitoring users logged in and processes running at any given time)

1.3. Workflow System Utilities Documentation. The Standard Utilities documentation is installed as a PDF file (Utils.pdf) and addresses various utilities available to perform maintenance procedures within the workflow applications and the database. The system utilities documentation includes:
(A) Check Document Utility
(B) Clear Cache Utility
(C) Empty Folders Maintenance
(D) Orphan Utility

1.4. Workflow Technical Documentation. The standard technical documentation includes client software installation procedures, server/database administration, backup procedures and all third party software and hardware vendor supplied documents. VISTA-SG documents are typically in MS Word format. Examples include:
(A) Shutdown and Startup Procedures for the server(s) and database
(B) Description of the basic disk structure of the server
(C) Basic Database Maintenance Procedures for VistaSG
(D) System Backup Procedures (monitoring and managing the workflow system backup operations and tape rotations)
(E) Procedures for the creation of an emergency repair disk for server emergency recovery.
(F) Procedures for the maintenance of the dialup software and modem for remote maintenance
(G) Client Setup for Workflow Application Software
(H) Vendor Supplied Information on 3rd Party Software and Hardware

2. Training Deliverables

The VISTA-SG training methodology provides a combination of instructor-driven lecture and student laboratory exercises delivered in a multi-student classroom setting. The approach for each topic will include instructor lecture on the topic, instructor demonstration of the topic, a student walk-through of the topic on a workstation, and student participation in an exercise that reinforces the subject.

2.1. Customer Training Process. The major activities associated with the customer training process are:
- (A) Determine Customer Training Requirements and Facility Availability
- (B) Accomplish business process analysis and impact study as a part of Phase I analysis
- (C) Determine modules to be included in customer training program
- (D) Determine number of trainees to be trained on each module
- (E) Ascertain customer trainee availability for training on each module
- (F) Determine customer facilities available for training use

2.2. Develop Customer Training Program
- (A) Work with customer to develop detailed training.
- (B) Prepare training documentation and materials

2.3. Setup Testing & Training System (Hardware and Software)
- (A) Load software on designated equipment to test workflow and conduct training.
- (B) Install any peripheral equipment needed for training on each module
- (C) Setup workflow application software for the Test/Train project. The Test/Train project will be configured to represent the actual proposed workflow project (Users, Groups, Document Types, Security Levels, Workflow and Routing Rules, etc.) and will be used for testing the proposed workflow as well as training system users.

2.4. Conduct Classroom/Laboratory Training
- (A) Utilize combination of lecture and hands-on instruction
- (B) Incorporate information derived from site analysis to teach modifications of legacy process needed to maximize productivity with the VistaSG system.
- (C) Review Training Evaluation Forms filled out by students from each training class to improve and enhance ongoing training effort.

2.5. Conduct Testing/Training Exercises
- (A) Collect real documents (or copies) processed on a specific day using the legacy process.
- (B) Conduct a testing and training exercise by utilizing the VistaSG Workflow Test/Train system to process the sample documents based on the proposed workflow and analyze the results.
- (C) Identify lessons learned for use in production environment

3. Training Program Responsibilities

VISTA-SG will develop a detailed training schedule as a part of a more detailed project schedule during the first few weeks of the project. The training schedule will include a predetermined number of fixed classes for each component of the curriculum described below.

4. VISTA-SG Responsibilities

4.1. Coordinate with appropriate customer's managers/supervisors while developing training requirements, schedules and resource availability.

4.2. Prepare and distribute appropriate training documents and materials.

4.3. Provide quality instruction

5. Customer Responsibilities

5.1. Insure trainee availability which facilitates efficient use of VISTA-SG training resources.

5.2. Insure availability of adequate training facilities and resources which facilitate efficient use of VISTA-SG resources.

5.3. Submit for training only those personnel who possess basic skills with Windows-based programs (i.e.-using a mouse, minimizing windows, opening files, etc.).

5.4. Submit for training only those personnel who are already proficient at performing a similar or parallel legacy process tasks in the customer's business operation.

5.5. Provide detailed information regarding current business processes and access to management authorized to approve business process changes.

6. Student Materials

6.1. The VISTA-SG Trainer will print the applicable standard workflow application documentation (from the PDF files) and utilize this documentation, along with VISTA-SG developed Training Checklists, as student guides for each training class. In addition, VISTA-SG personnel will create any custom documentation necessary to train system end-users on the new workflow processes. These process modifications will be discussed and approved by the customer's management before the training is performed. Custom documentation provided by VISTA-SG is typically created using MS Word. All training materials used in classes taught by VISTA-SG personnel will be provided to the customer.

(A) Applicable chapter/module pages from the standard workflow application documentation.

(B) VISTA-SG Training Checklists and Evaluation Forms

(C) Custom Documentation addressing any new or changed workflow procedures.

7. Workflow End User Training

The end user training curriculum is designed to familiarize the users with the concepts, organization and navigation of the VistaSG application software and to provide detailed instruction for the use of each applicable module. End user training will address the following topics:

7.1. System Introduction/Overview

7.2. Getting Started and Navigation

7.3. Detailed operating instructions for the system modules purchased under the contract. This typically includes Scanning, Indexing Document Retrieval, The Image Viewer Utility and Tools, Task Queue Processing and Inspection/Quality Assurance, as well as any optional modules.

Training on the new workflow processes that have been approved by the customer's management to maximize productivity with the VistaSG Workflow System will be covered during the applicable class modules.

8. New Feature Training

8.1. Provide an overview of any new or additional modules that may not have been purchased or may not be available for general release yet.

8.2. Show possible effect of using new features or modules in current VistaSG environment.

9. Workflow System Administration Training

9.1. The system administration training classes will address user configurable software items in the system and system setup and management tools including:

9.2. Design and Maintenance of Projects (Creating a Project and setting up Tables & Fields).

9.3. System Setup (Users, Groups, Security Levels, Doc Types, etc.)

9.4. Designing a Workflow (Creating Workflow Nodes and Routing Rules, etc.)

9.5. Managing the Workflow (Monitoring and redistributing work)

9.6. Reports and Statistical Analysis Tools

9.7. Process Monitor (Monitoring users logged in and process running in any given time)

10. Workflow System Utilities Training

10.1. The system utilities training addresses various utilities available to perform maintenance procedures within the workflow applications and the database. Some utilities are also designed to create electronic stamps and templates to be used in specific workflow applications. The system utilities training includes:

(A) Check Document Utility
(B) Clear Cache Utility
(C) Empty Folders Maintenance
(D) Orphan Utility

11. Workflow Server/Database Administration

11.1. This session will familiarize the trainee(s) with the basic administration of the various Servers utilized for the VistaSG Workflow Application, Database and Image Storage. The types of items addressed in this training include:

(A) Shutdown and startup procedures for the server(s) and database
(B) Description of the basic disk structure of the server
(C) Performing basic database maintenance functions for VistaSG Workflow System
(D) Maintenance of the dialup software and modem for remote maintenance
(E) System Backup Procedures) manage system backup operations and monitor status)
(F) Creation of an emergency repair disk for server emergency recovery
(G) Installation of the VistaSG Workflow Application Client on a workstation

12. Summary of Repairs, Maintenance & Support

12.1. **Maintenance**: All VistaSG software sold by Vista Solutions Group comes with a 90-day warranty effective from the customer acceptance date or "go-live" date. A software maintenance program is available that provides for software version updates, software "bug fixes", and evaluation of VistaSG system problems with the existing computing environment of the customer. See the support discussion below for description of response times to prioritization of reported problems.

12.2. **Support**: The VistaSG Help Desk is available to accept telephone calls from 8 am to 6 pm, Monday through Friday. The telephone number for the Help Desk is 512-267-1821. Please identify the following items:

(A) Location and Name
(B) Caller Name
(C) Name/Department of User Having Problem
(D) Telephone Number
(E) Priority (i.e., High, Routine, Low, FYI)
(F) Description of Problem

The VistaSG Customer Support Help line normally responds to phone support requests immediately and in the majority of cases resolves the problem reported within 30 minutes. However, if calls are received during hours when the Help line is not manned, the caller is requested to leave a voice mail and a Support Consultant will be paged to retrieve the message. This process can take more than 15 minutes due to variations in pager operating capability and Consultant availability.

Our current response/resolution goals for customer service requests are summarized in the following table…"Response" means establishing contact with the customer and initiating the process that will lead to "Resolution".

Priority Assigned	Type of Problem/Request	Response Goal	Resolution Goal	Remarks
1	System is down, or major critical functionality is not operating	Immediate	Within 1 hour	
2	Non-critical but major functionality or hardware is inoperative	Within 15 minutes	Within 4 hours	
3	System feature or minor hardware is inoperative	Within 30 minutes	Within 3 days	
4	Minor system feature or hardware is affected, but an effective work around is in place; or new functionality, feature, enhancement or system expansion is desired	Within 4 hours	Incorporate software changes in next software release, and make hardware changes within 3 months	

Note: Customers can report problems directly to the Help line via toll free telephone line, toll free fax line, direct web access and reporting, or e-mail.

The Support Consultant who receives the call will gather information needed to analyze the problem, utilize troubleshooting measures to further define the cause of the problem and work with the customer to resolve the problem over the phone, if possible. In addition to telephone contact, the Consultant can utilize remote dial-in capability to monitor or execute actions on the customer's system as though he/she were present on-site. If the Consultant does not resolve the problem quickly, he/she will refer the issue to the appropriate subject matter expert who will then either resolve the problem directly, or initiate appropriate actions to elevate the problem to the attention of the responsible manager.

Responses to support requests vary from telephone help from a Support Consultant, to remote dial-in assistance by a subject matter expert, to dispatch of a response team to the customer's location. Customer calls are all logged in our support database and distributed to appropriate person via e-mail.

CONTRACTOR

BY: Mimi Bzon

DATE: 12/01/2009

STATE OF OHIO,
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF STATE PURCHASING

BY: Hugh Quill/SAH

HUGH QUILL DIRECTOR,
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE: 12-7-09